

Procedure: 4.1.2p.

Verifying Identity and Employment Eligibility

Revised: May 10, 2017; May 17, 2016; September 28, 2001

Last Reviewed: May 10, 2017

Approved: September 28, 2001



I. PURPOSE:

Pursuant to applicable provisions of the federal Immigration and Nationality Act (INA), the Immigration Reform and Control Act of 1986 (8 U.S.C. 1324 (a), as amended) and the Georgia Immigration Security and Compliance Act (O.C.G.A. §13-10-90 et.seq) all work units of the Technical College System of Georgia (TCSG) must verify both the identity and employment eligibility of new employees.

It is unlawful to knowingly hire an individual unauthorized to work in the United States; to hire any individual without complying with the noted identify and employment eligibility verification requirements; or, to continue the employment of an individual if a TCSG work unit knows or should know that the person is not authorized to work. Additionally, the INA prohibits employers from discriminating against individuals based on their citizenship or immigration status or based on their national origin in the Form I-9, Employment Eligibility Verification process.

The provisions of this procedure apply only to newly hired employees or those employees who return to State service after a formal break-in-service. These provisions do not apply to promotions, demotions, transfer between TCSG work units or, an individual's transfer between state agencies provided no break-in-service has occurred.

II. RELATED AUTHORITY:

8 U.S.C. 1324 – Immigration Reform and Control Act of 1986, as amended
8 C.F.R. §274 – Control of Employment of Aliens Immigration and Nationality Act (INA), as amended
28 C.F.R. §44.200 – Unfair Immigration-Related Employment Practices
O.C.G.A. §13-10-90 et.seq – Georgia Immigration Security and Compliance Act
State Personnel Board Rule 6 – Recruiting, Interviewing, and Hiring
U.S. Citizenship and Immigration Services Privacy Act

III. APPLICABILITY:

All work units and technical colleges associated with the Technical College System of Georgia.

IV. DEFINITIONS:

Break-in-Service: a voluntary or involuntary separation from employment for at least one (1) full business day.

Document Abuse: discriminatory documentary processes related to verifying the employment authorization and identity of employees during the Form I-9 process.

Employee: pursuant to the provisions of 8 U.S.C. §274(a), the term includes an individual who provides services or labor for an employer for wages or other remuneration but not independent contractors

Public Employer: pursuant to the Georgia Immigration Security and Compliance Act, the term means every department, agency or instrumentality of this state or a political subdivision of this state.

TCSG Work Unit: the TCSG System Office, Quick Start Headquarters, Quick Start Regional Office or training center, or an associated technical college.

Unauthorized Alien: for purposes of this procedure, an alien who has not been lawfully admitted for permanent residence in the United States or who is not authorized to be employed under the provisions of the Immigration Reform and Control Act or by the authority of the Attorney General of the United States.

Unfair Immigration-Related Employment Practice: pursuant to the provisions of 28 C.F.R § 44.200, an unfair immigration-related employment practice occurs when:

- (1) General - a person or other entity intentionally discriminates or engages in a pattern or practice of intentional discrimination against any individual (other than an unauthorized alien) with respect to hiring or recruitment or referral for a fee of the individual for employment or, discharging the individual from employment because of an his/her national origin or, in the case of a protected individual, his/her citizenship status;
- (2) Intimidation or Retaliation – a person or other entity may not intimidate, threaten, coerce or retaliate against any individual for the purpose of interfering with any right or privilege secured under 8 U.S.C. §1324(b) or because an individual intends to file or has filed a charge or a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Section; and,
- (3) Documentation Abuses – a person or other entity requires [for the purpose of satisfying the requirements of 8 U.S.C. §1324a(b)], more or different documents than are required or refuses to honor documents tendered that reasonably appear to be genuine and to relate to the individual.

V. ATTACHMENTS:

Attachment A – [INS Employment Eligibility Verification Form I-9](#)

Attachment B – Instructions for Form I-9 – Employment Eligibility Verification

VI. PROCEDURE:

A. Verification Process:

1. To establish employment eligibility, a current version of the Department of Immigration and Naturalization (INS) Form I-9 must be completed for each new employee.
2. TCSG work units have the option of using a paper Form I-9 (Attachment A) or utilizing the United States Customs and Immigration Services (USCIS) I-9 Smart Form and printing a copy of the completed form. The Smart Form can be downloaded from the USCIS website (www.uscis.gov) by selecting the I-9 Central link and the "I-9 Desktop Widget" option.
3. Within the meaning of the USCIS regulations, the Smart Form is not an electronic form but, instead, a functionality tool to better ensure that common completion errors on the Form I-9 (such as fields left blank or fields filled out incorrectly) are avoided. It is not permissible to pre-populate Section 1 fields using an onboarding system/process.
4. Form I-9 Basic Requirements:
 - a. all employees hired after November 6, 1986 must have a Form I-9 on file;
 - b. a copy of the Instructions for Form I-9 (Attachment B) must be provided to an employee to refer to while completing the form. NOTE: TCSG work units are not required to provide a copy that the employee may keep.
 - c. the Form I-9 may be completed prior to an employee's designated hire date provided a conditional offer of employment has been made and accepted. For purposes of this procedure, the conditional offer must first have been finalized, in writing, by the employing TCSG work unit.
 - d. Section 1 of the Form I-9 must be completed by the employee or one or more preparers/translators no later than the start date of employment. No employee may be allowed to finish his/her first day of work without completing Section 1.
 - e. Section 2 of the Form I-9 must be completed by a trained human resources representative no later than the end of the third business days after an employee begins work. NOTE: any employee who will work for three (3) business days or less may not be allowed to begin work until both Section 1 and 2 are completed and verified; and,
 - f. "N/A" should be inserted in all fields where no information is available;
5. Minors Under Age 18:
 - a. If a new employee is under eighteen (18) and cannot produce an acceptable List A or List B document, he/she may present a school record or report card, a clinic,

doctor or hospital record, or day care or nursery school record to satisfy documentation requirements and establish identify;

- b. If a minor cannot produce a List B document (to include a document referenced in Paragraph VI.A.5.a.), the Form I-9 should be completed as follows:
 1. in Section 1, a parent or legal guardian must complete the minor's information, check the box by the minor's status, enter "minor under age 18" in the space for the employee's signature and complete the Preparer/Translator Certification field.
 2. in Section 2, a parent or legal guardian enters "minor under age 18" under List B;
 3. the minor must present a List C document and either he/she or the parent/legal guardian enters the document presented on the List C field; and,
 4. the human resources representative should add the employee info from Section 1 and complete the Certification field in the same manner as for all other newly hired employees.

B. Completing Section 1:

1. Each employee must complete all associated fields including U.S. Social Security Number given that the TCSG participates in the E-Verify Program. NOTE: if an employee has not yet been issued a Social Security Number, a human resources representative may contact E-verify at 888-464-4218 or www.dhs.gov/E-Verify for assistance in completing this field;
2. Each employee must sign and date the form and if a preparer/translator does not assist the employee, the associated box in the Preparer and/or Translator Certification field must be checked;
3. If a preparer or translator assists an employee, he/she must check the appropriate block in the Preparer and/or Translator Certification field, add the required information, and sign and date the certification. NOTE: the date the employee enters next to his/her signature must match the date the preparer/translator signed the form;
4. If more than one preparer/translator assists the employee in completing a paper form, the Form I-9 Supplement, Section 1 – Preparer/Translator Certification should be used to document each individual's participation;
5. If more than one preparer/translator assists the employee and the Smart Form is used, the number of certification areas needed should be selected from the dropdown menu. An additional page will be generated for each individual providing assistance and each preparer/translator must complete, sign and date a separate certification area;

6. All completed certification sheets/pages must be attached to the completed Form I-9; and,
7. The human resources representative should review all information on the completed Form I-9 for completeness and should note whether an employee indicated that his/her employment authorization will expire as this may later require reverification. NOTE: the expiration date for employment authorization provided by the employee may or may not match the expiration date of the provided List A or List C document. If reverification is required, the earlier date should be used for these purposes.

C. Completing Section 2:

1. Each newly hired employee must provide a combination of original, unexpired documents establishing his/her identify and authorization to work in the United States within three (3) business days after his/her hire date.
2. Each employee may choose which document(s) to provide from the List of Acceptable Documents referenced on the Form I-9.
3. In limited circumstances (e.g., when an employee has applied to replace a document that was lost, stolen or damaged), he/she may present an acceptable receipt in place of a List A, B, or C document. A receipt for the application for an initial or renewal employment authorization document cannot be accepted; however, a receipt for the application for the replacement of a lost, stolen, or damaged employment authorization document can be accepted provided it is not for a period of less than 3 days. NOTE: if a receipt is accepted, the actual document must be presented within ninety (90) calendar days
4. The human resources representative must physically examine and accept any document(s) that reasonably appear genuine and relate to the individual presenting it. After examining the documents the human resources representative will certify and photocopy the documents and return the originals to the employee.
5. If the required document(s) or a receipt for the application for replacement document(s) is/are not provided in a timely manner, the employee must not be allowed to continue to work. In these instances, the employee may be released from employment or placed in a non-pay status for a limited period of time until valid document(s) or a receipt is provided and Section 2 of the Form I-9 is completed and subsequently entered in and certified through the E-Verify System.
6. Information from the Form I-9 must be submitted to the Social Security Administration (SSA) and the Department of Homeland Security (DHS) via the E-Verify system within three (3) business days after each new employee's hire date/start date. Additionally, the designated human resources representative should monitor E-Verify alerts to ensure that all entries are completed in a timely manner.

D. Re-verification:

1. Re-verification is not required for:

- a. U.S. citizens and non-citizen nationals;
 - b. lawful permanent residents who presented a Form I-551 (Permanent Resident or Alien Registration receipt card. NOTE: a Form I-551 may contain no expiration date, a ten (10) year expiration date, or a two (2) year expiration date with conditions. Although a permanent resident with conditions can lose his/her status if he/she fails to remove these conditions, guidance from the United States Citizenship and Immigration Services (USCIS) provides that the employee is not subject to reverification; and,
 - c. List B documents.
2. Other than the exceptions referenced in Paragraph VI.C.1., when an individual's employment authorization or employment authorization documentation expires, reverification is required through the completion of Section 3 of the Form I-9. Reverification entails the presentation of a List A or List C document(s) (or acceptable receipt) which reflects continuous employment authorization on the date his/her initial document re: employment authorization or documentation expires, whichever is sooner.
 3. To ensure that an affected employee remains authorized to work,, a human resources representative should remind the employee of the requirements of Paragraph VI.C.2., at least ninety (90) calendar days before the expiration date of his/her current employment authorization document(s).
 4. To complete Section 3, a human resources representative must:
 - a. examine the unexpired document(s) to determine if it/they appear to be genuine and pertain to the employee. If the document(s) do not reasonably appear to be genuine and pertain to the employee, he/she may present other documentation from List A or List C;
 - b. record the document title, document number and expiration date (if any); and,
 - c. sign and date the form.
 5. If Section 3 has previously been completed or if the version of the form used for a previous verification is no longer valid, a new Form I-9 must be completed. Section 3 or the new form should be attached to the previously completed Form I-9 and, as applicable, a photocopy of the presented document(s).
 6. If an employee cannot provide the required documentation, his/her employment with the TCSG work unit cannot continue.

E. Rehires:

1. If an employee is rehired within three (3) years of the date that a previous Form I-9 was completed, a human resources representative may either complete a new Form I-9 or complete Section 3 of previously completed Form I-9.
2. If Section 3 is to be completed, the human resources representative must:
 - a. confirm that the original Form I-9 pertains to the employee;
 - b. determine if the employee is still authorized to work, including whether employment authorization documentation presented in Section 2 (List A or List C document[s]) has expired or has been auto-extended. As applicable, use the reverification provisions of Paragraph VI.C. when completing Section 3;
 - c. if the employee remains authorized to work and his/her employment authorization documentation is still valid, enter the date of the rehire;
 - d. if the employee is no longer authorized to work or the employment authorization documentation has expired and requires reverification, request that the employee present unexpired document(s) only from List A or List C. Enter the document information and the date of rehire in the spaces provided. If the current version of Form I-9 is different from the previously completed Form I-9, Section 3 of the current version must be used; and,
 - e. sign and date Section 3.

NOTE: Section 3 includes three (3) spaces/fields in which a date must be entered as follows:

- If a former employee is rehired, enter the rehire date that the employee begins work which could include a future date, if applicable, in block B;
 - If reverification is required, enter the date the employee's new work authorization document expires in block C; and,
 - when completing Section 3 for any reason, the date the Section is completed should be entered followed by the required signature.
3. A new Form I-9 must be completed if the break-in-service was more than three (3) years in length.

F. Recording Name Changes and Other Identity Information of Current Employees:

1. Pursuant to guidance from the USCIS, it is the practice of the Technical College System of Georgia (TCSG) to maintain correct information on each employee's Form I-9 and take reasonable steps to be assured of its employee's identify if there has been a legal name change.
2. To this end, if a TCSG work unit learns of or is informed directly by an employee of a legal name change during an active period of employment, the employee will be asked to provide supporting documentation of the legal name change (e.g., a photocopy of a marriage license). Section 3 of the Form I-9 should be updated in the

same manner as outlined in Paragraph VI.C. The supporting documentation should be attached to and retained with the updated Form I-9.

3. If an employee informs a TCSG work unit that his/her identify is different from the time the Form I-9 was previously completed (e.g., a name, date of birth, or Social Security Number), and is unable to provide evidence linking the new information to the identity previously use, the work unit should:
 - a. complete a new Form I-9;
 - b. write the original hire date in "The employee's first day of employment (MM/DD/YYYY) space in Section 2; and,
 - c. attach the new Form I-9 to the previously completed Form I-9.

NOTE: if the Section 1 information has not substantially changed but he employee has offered different evidence of work authorization, the human resources representative should examine the documentation to determine if it appears to be genuine and relates to the employee presenting it. If true, the representative should complete Section 3 of the previous Form I-9. If the current version of the Form is different from the previously completed Form I-9, the representative must complete Section 3 of the current version of the Form I-9.

G. Correcting Errors on the Form I-9:

1. A TCSG work unit is required to promptly correct mistakes on the Form I-9 or information entered in the E-Verify system without obscuring the error or concealing that a mistake was made.
2. Common mistakes in Section 1 that are correctable include: the employee did not check the box regarding his/her authorization to work in the U.S.; a missing Social Security Number; the employee failed to check or fully complete the Citizenship Status block; and, the employee did not sign/date the form.
3. Common mistakes in Section 2 that are correctable include: no start date listed in the certification box; issuing authority document number and/or expiration date missing for identify and/or work authorization document(s); too many or too few documents listed; and, employer's signature box incomplete.
4. If it is determined that an employee completed Section 1 after commencing employment, the error is not correctable.
5. Making Corrections:
 - a. Section 1 errors must be corrected by the employee;
 - b. Section 2 errors must be completed by a human resources representative;

- c. the error should be “struck through”. NOTE: the use of a correction fluid such as “White Out to obscure an error is not permissible;
- d. all corrections should be initialed, dated, and include the term or statement noting why the error occurred or, in the event of a self-audit, “Per Self Audit”;
- e. to correct multiple recording errors, it is permissible to complete a new Section 1 or 2 and attaching the document to the old Form I-9 with notations as to why a new Section was completed; and,
- f. to correct major errors such as accepting an unacceptable document a new Form I-9 may be completed with notations as to reason for this action. The new form should be attached to the old form.

H. Missing Form:

1. If it is determined that a Form I-9 is missing for a current employee, a new form should be promptly completed;
2. The employee should complete Section 1. A human resources representative should complete Section 2, insert the original hire date, sign and add the current date to the “Todays Date” field;
3. A notation should be added as to why the new form was completed;
4. If it is discovered that a terminated employee’s Form I-9 is missing and the discovery is made within the established retention period referenced in Paragraph VII, the former employee may be contacted to complete a new form using the current date as noted above. If a new form is not completed, a notation should be made regarding these circumstances in the event a formal inspection of these documents occurs.

I. Form I-9 Use and Access:

1. Pursuant to the USCIS Privacy Act, the Form I-9 information will be used by employers as a record of their basis for determining the eligibility of an employee to work in the United States An employer must retain the form for the required period of time and make it available for inspection by authorized individuals of the Department of Homeland Security, Department of Labor, and the Immigrant and Employee Rights Section (IER) of the Department of Justice.
2. A completed Form I-9, as well as all attached document(s), may not be accessed or used by a TCSG work unit for any purpose not associated with compliance with the provisions of this procedure, the USCIS Privacy Act and, accompanying state and federal law.

J. Inspection:

1. Officials from the Department of Homeland Security, employees of the Department of Labor, or, employees of the IER Section of the Department of Justice (OSC) may inspect an employer's Forms I-9.
2. Each agency/office generally provide employers a minimum of three (3) business days' notice (in person or by certified U.S. mail) prior to any such inspection; however, a subpoena or warrant may be used to obtain the forms without providing a three (3) day notice period.
3. Upon request, a TCSG work unit must make Forms I-9 available at the location designated by DHS, DOL, or the IER .

K. Unlawful Discrimination

1. The anti-discrimination provision of the Immigration and Nationality Act (INA), as amended, prohibits four types of unlawful conduct:
 - a. citizenship or immigration status discrimination with respect to hiring, firing and recruitment (or referral for a fee);
 - b. national origin discrimination with respect to hiring, firing and recruitment (or referral for a fee). NOTE: the EEOC has jurisdiction over employers with fifteen (15) or more employees;
 - c. unfair documentary practices during Form I-9 process (i.e., document abuse); and,
 - d. retaliation/Intimidation.
2. In application, the anti-discrimination provisions referenced in Paragraph VI.K.1. require all TCSG work units must treat individuals equally in recruiting, hiring and firing (and other disciplinary action processes) and, when verifying employment authorization and identity during the Form I-9 process as follows:
 - a. U.S. citizens, recent permanent residents, temporary residents, asylees, and refugees are protected from citizenship status discrimination. Exceptions to this prohibition pertain to permanent residents who do not apply for naturalization within six (6) months of eligibility and those referenced in Paragraph VI.G.3.d;
 - b. U.S. citizens, lawful permanent residents, and other work authorized individuals are protected from national origin discrimination because of their place of birth, country of origin, ancestry, native language, accent, or the perception that they look or sound "foreign";
 - c. covered employers may not request more or different documents than are required to verify employment eligibility, reject reasonably genuine-looking documents or, specify certain documents over others with the purpose or intent of discriminating or because of citizenship status or national origin; and,

- d. individuals who file charges with the Immigrant Employee Rights (IER) Section of the Department of Justice, who cooperate with an IER (or EEOC) investigation, who contest actions that may constitute unfair documentary practices or discrimination based on citizenship or immigration status or national origin or, who assert their rights under the INA anti-discrimination provisions are protected from intimidation, retaliation, threats, and coercion.
3. Additional documentary practices a TCSG work unit should avoid include:
 - a. requesting to see employment authorization documents before an applicant is hired and subsequently completes a Form I-9;
 - b. refusing to hire an individual because a document has a future expiration date; and,
 - c. requiring a specific document when re-verifying that an individual is authorized to work.
4. Requiring that the selected candidate for a given position be a U.S. citizen is not permitted unless U.S. citizenship is required to comply with law, regulation or executive order; is required by or federal, state, or local government contract; or, when the U.S. Attorney General determines that this requirement is be essential for an employer to do business with an agency or department of the Federal, State or local government.
5. Pursuant to applicable provisions of 28 C.F.R. § 44.200, it is not an unfair immigration-related employment practice for a TCSG work unit to select a U.S. citizen or noncitizen national over an equally qualified alien to fill a specific position; however, a TCSG work unit should not adopt a practice of always preferring citizens or a noncitizen nationals over authorized aliens.

VII. RECORDS RETENTION:

- A.** Pursuant to federal law, acceptable formats for storing/retaining Forms I-9 include: the original paper Form I-9, a copy of the original, signed Form I-9 on microfilm or microfiche, or a copy of the original, signed Form I-9 in an electronic system.
- B.** A completed Form I-9 with accompanying document(s) may be maintained in an employee's official personnel file; however, pursuant to USCIS guidance, the preferred method is to maintain these documents in a separate file to provide for easy retrieval in the event of a federal agency inspection and to better ensure that adequate safeguards are in place to protect employee information.
- C.** Pursuant to the requirements of the Georgia Archives Retention Schedule for State Government Paper and Electronic Records and corresponding federal law, every Form I-9 and photocopied documents shall be maintained for three (3) years after the date of hire or one (1) year after the date of employment ends, whichever is later. After retention requirements are met, a Form I-9 should be purged/shredded.